

Colonial Effects on the Founding of the 1951 Refugee Convention

Ulrike Krause

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Whether internationally or nationally, law does not simply exist but is made by political actors; those involved thus have the power to set standards. Exactly this politicization of international refugee law is at the core of my piece. I explore which and how states discussed the Refugee Convention, and what effects colonialism had.

A [considerable body of research is available on international refugee law and the Refugee Convention specifically](#). Many studies note that the experiences of insufficient admission and protection of refugees in and from Europe during the Second World War and the growing commitment of the international community after the war contributed to the creation of the Convention. The timing of the Convention's founding further indicates these ties: The international community – represented in the newly established UN – drafted the Convention soon after the war and states adopted it at the Conference of Plenipotentiaries in 1951.

But what roles did colonial structures play? Considering such research debates, one gets the impression that colonialism, (de)colonized states and refugees there had no effect on the Convention's creation – instead, events in Europe appear to have been decisive. While the latter were undoubtedly influential, a mere or main focus on Europe reflects a bias toward Western history, not global history, and certainly not colonial history. In this piece, I reflect on this bias. Drawing on a [recently published article](#), I explore states' discussions of the Refugee Convention and the roles of colonialism.

Having a Seat at the Table Makes All the Difference

Already in its [8th resolution](#) in February 1946, the UN General Assembly (UNGA) addressed refugees and called for responses. This paved the way for further discussions also concerning the Convention.

What was the path? Following a [study](#) about national legislations and international agreements provided by the UN Secretary General in 1949, member states addressed the draft convention in different UN forums in 1950. In a nutshell, these included the Ad Hoc Committee, which was appointed specifically to discuss and draft the convention. It reported to the Economic and Social Council (ECOSOC), which in turn reported to the UNGA. Final consultations occurred at the Conference of Plenipotentiaries in July 1951.

The different forums reflect the complex process that took place in a short time. The forums could also be seen as an indication that all UN member states had equally strong voices in the process. This was not the case, however – some

states were more influential than others. The composition of the forums already exposes that: Only the UNGA comprised all UN member states ([60 in 1950](#)); the [Ad Hoc Committee](#) had 13 and [ECOSOC](#) 18 members while 26 states attended the [conference](#) of which 20 were UN members and two came as observers. Importantly, eight states were involved in all these forums (Belgium, Brazil, Canada, Denmark, France, UK, US, Venezuela (observer in ECOSOC)). By pure presence, they thus had more opportunities to influence the process than others.

I agree with [White](#) that it is important to explore why states, especially beyond Europe, attended the founding conference. Moreover, I believe it is crucial to investigate who did *not* participate *in the whole process* and why? Concerning UN debates, this question is easy to answer: non-member states of the UN were unable to take part and this applies especially to those who could not even become members: those colonized. All colonial and imperial powers were members, however.

Regarding the conference, answering this question is more complicated because the [UNGA decided](#) to invite “all states, both members and non-members”. But what did inviting “all states” mean in 1950? It applied to sovereign ones, and the list of (un)invited and (non-)participating states for the conference is telling. Apart from Cambodia and Laos, which were still under external rule but had started processes toward independence, no other still-colonized state was invited. Represented by colonizers, those colonized were therefore excluded and silenced – an aspect that [Pakistan's delegate](#) strongly criticized in earlier [discussions about the Human Rights Covenant](#) and suggested to allow representatives to join “if only in a consultative capacity”. This did not happen, however. The list of conference participants shows not only a small number of states joining but also various [colonial entanglements among participants](#): five were former and seven current colonial powers, ten decolonized states of which three had gained global power, and four were without a direct colonial past.

Why recently decolonized states such as India and Pakistan that articulated strong statements in UN debates did not attend the conference, is difficult to say conclusively. Pakistan submitted a [comment before the conference](#), which suggests initial interest. Yet, diverse statements in debates indicate that both delegations were highly critical of the European bias, which resulted in frustration, “[disillusionment](#)” and increasingly refraining from debates.

Hence, the global relations and basic possibilities of having a seat at the table already demonstrates the importance of colonial structures. While some states were able to represent their positions and interests, some even in various forums, ‘Others’ were completely excluded. This does not mean that ‘the Others’ were less or even irrelevant in the process. Instead, it illustrates their structural marginalization and silencing.

Focusing on Some (but not ‘Other’) Refugees in the Creation of the 1951 Convention

Marginalization practices are also evident in debates among states about whom the Convention should apply: the refugees. The discussions about the refugee definition were tense and continuously referred to refugees in and from Europe but also to those worldwide. This is important to consider as it shows that the European bias of the Convention was not supported or favored by all participating states. On the contrary, it was highly contested and strongly opposed by many.

After the Ad Hoc Committee submitted its [first report in February 1950](#) with a refugee definition strongly focusing on Europe, ECOSOC attended to it. Some [ECOSOC members](#), including Chile, Mexico and Pakistan, contested the focus, while others such as the US and France supported it. [Pakistan's delegate](#) stressed later that it “could not accept the definition” as it “covered European refugees only and completely ignored refugees from other parts of the world.” The [ECOSOC then decided](#) to reconvene the Ad Hoc Committee to revise the refugee definition and report directly to the UNGA due to limited time.

Despite revisions, the Ad Hoc Committee maintained a bias toward Europe in the [second report in August 1950](#). This prompted controversial debates in the UNGA. While the former Soviet Union and its allies continued to oppose the Convention, [France, the US, Venezuela](#) and others reinforced the focus on refugees in and from Europe. The delegate of the Netherlands instead stressed the human dignity and human rights of all refugees, and countered that “the refugee problem was not near its final solution, especially if responsibility were accepted as being world-wide, as it should be, and not arbitrarily limited to Europe.”

The [delegate of India](#) also contradicted the ongoing European bias, emphasized the needs of refugees in India and criticized: “The United Nations should try to help not only special sections of the world's population, but all afflicted people everywhere. Suffering knew no racial or political boundaries; it was the same for all.” She stressed that the problem could only be solved if governments not only expressed but pursued “humanitarian sentiments” and “the United Nations had the same concern for all peoples, regardless of race.”

Such arguments illustrate the irritations arising from the European bias. The intense discussions in the UNGA had effects: the UNGA adopted the refugee definition without reference to Europe in [resolution 429\(V\)](#) by [41 votes to five noes and ten abstentions](#).

Despite this majority decision, participants at the conference addressed the subject again. This was not primarily due to the non-member states, which were unable to take part in UN debates, but generally pushed by UN members, especially powerful ones such as the US and France. Of the 26 states with voting rights at the conference, 13 supported a universal definition, ten one limited to Europe and three did not express clear tendencies.

Those supporting a limited definition included France, Italy, the US, Australia, Venezuela and Colombia, among others. They pursued varying political interests and sought to privilege refugees in Europe. Some found it impractical or “[unrealistic](#)” (see also [here](#)) to enact a convention for all refugees worldwide.

[France and Italy](#) further argued that only European states were prepared to sign the convention and warned of the “problems” that Western states would face if refugees from India, the Middle East or other regions reached in the future. Importantly, states extremely rarely spoke about the difficult conditions many refugees still endured in Europe to legitimize this regional focus; instead, delegations primarily reflected states’ interests.

States such as Egypt, Iraq, Belgium, Canada, the Netherlands and Denmark resisted and supported the universal definition. They similarly stressed the equal needs and humanitarian relevance of refugees worldwide. [Iraq’s delegate](#), for example, voiced his surprise and embarrassment about some delegations’ arguments as he thought “the Convention was to apply to all refugees without distinction”. [Egypt’s representative](#) emphasized: “To withhold the benefits of the Convention from certain categories of refugee would be to create a class of human beings who would enjoy no protection at all”. The UK also supported the universal definition but expressed economic interests.

These controversial discussions show how all participating states were well aware of refugees’ needs worldwide but some states still demanded the focus on Europe. This echoes the postcolonial notion of ‘the West and the Rest’ – in fact, ‘the West’ over ‘the Rest’. As a strategic move, some states sought to privilege European refugees, which also meant that they deliberately marginalized and ignored the ‘Other’ refugees and regions. They made the ‘Other’ refugees less relevant or even irrelevant in the establishment of the Convention and thus international refugee law.

Conference participants eventually voted for the refugee definition distinguishing between ‘[events occurring in Europe](#)’ and ‘[in Europe or elsewhere](#)’ each before 1 January 1951. While some scholars may understand the option as a compromise, I find it indicative of powerful states having successfully defended their interests. The framing reflects the structural and strategic subordination of refugees in regions beyond Europe, and “[makes \(Western\) Europe the centre of the world while the ‘Rest’ is only ‘elsewhere’](#).”

Then... and today?

Such political debates leading to the Refugee Convention’s founding illustrate the importance of (re)considering the global power disparities – beyond Western tensions. The debates prove that the focus on European refugees was not ‘a given’ due to contemporary conditions there but highly contested. Some powerful delegations eventually succeeded in inscribing the focus in the Convention despite strong oppositions; they thus intentionally privileged some – and ignored ‘Others’. In my [article](#), I argue that the conference debates rendered the Convention’s creation ‘colonial-ignorant’ – evidently not because delegates were unaware of forced migration and refugees ‘elsewhere’, but instead because they deliberately and strategically ignored them and thus made them irrelevant.

And today? My research revolves around the early days of the Convention and the findings do not necessarily mean that the marginalization persists similarly today. In addition to tracing some refugee movements in African states back to colonialism,

[Odhiambo Abuya](#) stresses that “colonialism is manifest in the western vision of international refugee law, which is predicated on ideas and structures that work in the interests of western nations and against the interests of the developing world and refugees”. Moreover, [Mayblin](#) explores the colonial entanglements of refugee policies, [Nyanduga](#) analyzes the roles of colonialism for the 1969 OAU Refugee Convention, and [Juss](#) reflects post-colonial lines in the Dublin II Regulation system. Some scholars furthermore discuss local conditions, including [Sen](#) and [Kaur](#) about refugees in post-partition India, [Peterson](#) about the varying responses to different groups of refugees in China, [Lingelbach](#) about Second World War refugees in British colonized territories, [Brankamp and Daley](#) about migrants and refugees, control policies and linkages to coloniality in Kenya and Tanzania, and [Gatrell](#) about the global making of the refugee. Yet many questions remain. To better understand past and current developments, we need further research about the politicization of international refugee law and its effects – especially from (post)colonial perspectives.

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